



# The Commonwealth of Massachusetts

AO-86-2

## Office of Campaign & Political Finance

One Ashburton Place, Boston 02108

727-8352

Thomas J. Duffin  
Director

September 25, 1986  
AO-86-20

Mr. Robert Ford, Chairman  
Committee to Repeal the  
Mandatory Seat Belt Law  
P.O. Box 371  
Swampscott, Ma. 01907

Dear Mr. Ford:

This is in response to your recent request for an advisory opinion concerning the application of M.G.L. c. 55, the campaign finance law, to activities you propose to undertake concerning the "education" of the electorate on seat belt issues.

Your specific questions and the appropriate answers are dealt with in the numbered sections set forth below:

- I. Am I permitted in my capacity as Chairman of the Committee to Repeal the Mandatory Seat Belt Law, or as a private citizen, to now make expenditures for the purpose of ultimately influencing the vote on Question #5 on the November ballot, without those expenditures being subject to the reporting requirements of the campaign finance law?

I begin my analysis with the campaign finance law itself, which provides that

"any committee, association, organization or other group of persons which receives contributions or makes expenditures . . . for the purpose of opposing or promoting a . . . referendum question"

is a political committee and must register with this office and report all contributions and expenditures. M.G.L. c. 55, §§ 1, 5, 18. I also note at the outset that you are the Chairman of the Committee to Repeal the Mandatory Seat Belt Law, a political committee registered with this office for the purpose of opposing Question #5 which will appear on the November 1986 state ballot. The efforts of your political committee encourage a "no" vote on this ballot question, which would repeal the mandatory seat belt law in the Commonwealth. It follows from these facts that any and all expenditures made by the Committee to Repeal the Mandatory Seat Belt Law must be reported to this office in accordance with the requirements of C. 55, §18.

The foregoing analysis does not apply to you as an individual. The campaign finance law does not require that individuals making expenditures for campaign finance purposes file individual reports with this office. Therefore, you may make independent expenditures, from your own personal funds, for the ultimate purpose of influencing the vote on Question #5. If those independent expenditures which you personally make are in the form of contributions or contributions-in-kind to any political committee, that political committee must disclose your contributions on the campaign finance reports it files with this office.

- II. Are other individuals permitted to make expenditures in the name of education which would "ultimately influence the electorate in their decision or position pertaining to a referendum question" without filing a Statement of Organization and campaign finance reports with your Office?

As stated above, the campaign finance law defines a political committee, in part, as any organization which receives contributions or makes expenditures for the purpose of promoting or opposing a referendum question. Any group or organization which receives contributions or makes expenditures for this purpose must file a Statement of Organization with this office and disclose all campaign finance activity on reports which are accurately and timely filed.

In determining whether these requirements would apply to a group's activities, the central issue is whether the purpose of an expenditure being made is to influence the vote on the ballot question. This determination is often very difficult to make because it must depend upon the very specific facts surrounding each activity. It requires a careful consideration and analysis of such factors as the style, tenor and timing of the expenditures in question, and must be made on a case by case basis.

In order to subject an expenditure to the regulation and requirements of the campaign finance law, there must be more than a vague presumption that the purpose of the expenditure is to influence the voter in the election. Rather, there must be some reasonable basis for drawing this conclusion. For instance, expenditures for materials which refer to a question on the ballot and advocate a position on the question would trigger the above-cited requirements. Furthermore, activities which do not refer to the ballot question may be subject to the law under certain circumstances. For instance the commencement of activities, just prior to an election concerning an issue which will appear as a ballot question, may compel the conclusion that the purpose of those activities is to influence the vote on the ballot question. Or, if an organization, which has always made general expenditures relative to a particular issue which is now appearing as a ballot question, significantly increases its expenditures just prior to the election, we might conclude that the purpose of the expenditures is to influence the vote on the ballot question. A determination of whether a particular expenditure is designed to influence the vote on the ballot question must be made on the basis of these factors as well as any others bearing on the intent of the spending party. It follows from the foregoing that

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your second question cannot be answered with a simple "yes" or "no." An expenditure intended to affect the vote is governed by the campaign finance law while one with only an incidental, unintended effect is not.

III. Am I, or are others permitted to receive contributions or make expenditures for the purpose of educating the electorate concerning constitutional rights or particular philosophies concerning invasion of privacy or freedom of choice provided no mention is made of a specific candidate or referendum question, without those activities being subject to the reporting requirements of the campaign finance law?

As I stated above, the central issue presented in determining the application of the campaign finance law to these activities is whether the expenditures being made are designed to influence the vote on a ballot question. Individuals and associations have the right to communicate and educate the general public regarding issues with which they are concerned without being subject to the campaign finance law, provided that any expenditures being made are not designed to influence the ballot question vote. That determination must be made after analyzing all relevant factors.

It is my opinion that expenditures which are made by the Committee to Repeal the Mandatory Seat Belt Law, and you as Chairman, for the purpose of communicating to the electorate particular views on issues such as governmental intrusion and freedom of choice would be designed to influence voters to vote no on Question #5. Advocating a particular vote on the ballot question is, in fact, the very purpose for which your committee is organized. Therefore, the Committee would have to disclose such activity on its campaign finance reports which it files with us. With respect to personal independent expenditures, by you in your private capacity, see my answer to question I.

It is my opinion that the requirements of the campaign finance law would not apply to a group which was concerned with the issues of constitutional rights and governmental intrusion, provided the activities are not being undertaken within the framework of a ballot question. Clearly, any reference to a ballot question as a part of those activities would subject the expenditures to the provisions of the campaign finance law. It is also possible that the timing of the activity and the style and tenor of the communications could create a strong presumption that the activities are designed to influence the vote. Having stated that, however, it is my opinion that an organization could make expenditures in order to communicate its views concerning constitutional issues without triggering the campaign finance law, provided the purpose of the organization and these expenditures are completely removed from any ballot question, and from individuals and organizations functioning in their capacity as ballot question advocates.

Furthermore, individuals who are subject in certain activities to provisions of the campaign finance law, are nevertheless free to speak out on issues with which they are concerned. The campaign finance

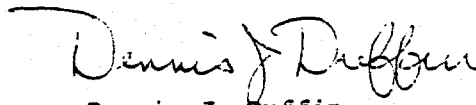
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law is concerned with expenditures, among other things, and does not attempt to restrict the right of individuals to speak. Indeed, such a law would almost certainly violate the First and Fourteenth Amendments to the United States Constitution.

You have also inquired as to the application of the campaign finance law to activities of certain public agencies and private organizations on the seat belt issue. For an analysis of those activities I refer you to the enclosed letter which we have sent today to Mr. Jerry Williams.

I have attempted, in this opinion, to provide you with guidance on the issues you have presented. It is important to remember that any determination concerning the application of the campaign finance law, when one is required to determine the purpose of certain activities, requires careful analysis and is often very problematic. I will be happy to respond to any other issues, or more specific questions, which you may have.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Dennis J. Duffin". The signature is fluid and cursive, with the first name "Dennis" and last name "Duffin" clearly distinguishable.

Dennis J. Duffin  
Director

DJD/rep

enclosure